IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 28205 of 2006(R)

PETITIONERS:

1. **T.V. MEERANKHAN,**
   SENIOR SUPERINTENDENT, DISTRICT COURT, THODUPUZHA.

2. **K.M. ABDUL KAREEM,**
   JUNIOR SUPERINTENDENT, MUNSIFF COURT, PEERUMEDU.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN
SRI.T.R.SATHEESAN
SMT.DHANYA CHANDRAN

RESPONDENTS:

1. **STATE OF KERALA,**
   REP. BY THE SECRETARY TO GOVERNMENT,
   HOME DEPARTMENT, GOVT.SECRETARIAT, TRIVANDRUM.

2. **HIGH COURT OF KERALA,**
   REPRESENTED BY ITS REGISTRAR(SUBORDINATE JUDICIARY)
   ERNAKULAM.

***ADDL.R3 & R4 ARE IMPLEADED:**

R3. T.K.KUTTAN, SENINOR SUPERINTENDENT,
DISTRICT COURT, THRISSUR.

...2/-

R4. V.J.ALEXANDER,
JUNIOR SUPERINTENDENT,
SUB COURT, SULTHAN BATHERY.

(*ADDL.R3 & R4 ARE IMPLEADED AS PER ORDER DTD. 1/12/2006
IN I.A.NO.16123/06)

**ADDL.R5 TO R11 ARE IMPLEADED:

R5. P.V.SHAMSUDDIN, S/O.LATE PAREETH, BEERAVU,
AGED 51, SENIOR SUPERINTENDENT, ADDITIONAL DISTRICT
COURT, NORTH PARUR.

R6. P.K.UNNI,
JUNIOR SUPERINTENDENT, DISTRICT COURT, ERNAKULAM.

R7. T.J.VIJAYALAKSHMI,
JUNIOR SUPERINTENDENT,
SUB COURT, ERNAKULAM.

R8. P.J.MARGRET,
JUNIOR SUPERINTENDENT,
SUB COURT, ERNAKULAM.

R9. K.C.SANTHAKUMARI,
JUNIOR SUPERINTENDENT,
MUNSIFF'S COURT, KOCHI, ERNAKULAM.

R10. K.RAJAN,
JUNIOR SUPERINTENDENT,
MUNSIFF'S COURT, PERUMBAVOOR, ERNAKULAM.

R11. M.N.SARASAMMA,
JUNIOR SUPERINTENDENT,
MACT, ERNAKULAM.

(**ADDL.R5 TO R11 ARE IMPLEADED AS PER ORDER DTD. 5/03/2007 IN I.A.NO.3056/07)

BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
SMT.K.RADHAMANI AMMA
SRI.ANTONY MUKKATH
SRI.K.V.JOY
SRI.K.RAMACHANDRAN (THYKOODAM)
SRI.V.K.PRAVEEN
SRI.S.SREEKUMAR
BY GOVERNMENT PLEADER SRI.T.T.MUHAMMED for R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/03/2007 ALONG WITH WPC.NO.2557 OF 2007, THE COURT ON 2/07/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF ORDER NO.B1-117/06 DTD. 7/02/06 ISSUED BY THE 2ND RESPONDENT.

EXT.P2: COPY OF ORDER NO.C1/26/2006 DTD. 10/02/06 ISSUED BY THE DISTRICT COURT, THODUPUZHA.

EXT.P3: COPY OF ORDER NO.C1-27/2006 DTD. 10/02/06 ISSUED BY THE DISTRICT COURT, THODUPUZHA.

EXT.P4: COPY OF G.O.(P) NO.11/06/HOME DTD. 21/01/06 ISSUED BY THE 1ST RESPONDENT.

EXT.P5: COPY OF RELEVANT EXTRACT OF DRAFT SENIORITY LIST ALONG WITH COVERING LETTER NO.C3-23597/2006 DTD. 4/08/06 ISSUED BY THE 2ND RESPONDENT.

EXT.P6: COPY OF SHOW CAUSE NOTICE NO.C3-23597/2006 DTD. 4/08/06 ISSUED BY THE 2ND RESPONDENT.

EXT.P7: COPY OF OBJECTION SUBMITTED BY THE 1ST PETITIONER BEFORE THE 2ND RESPONDENT DTD. NIL.

EXT.P8: COPY OF OBJECTION SUBMITTED BY THE 2ND PETITIONER BEFORE THE 2ND RESPONDENT THROUGH PROPER CHANNEL pm 31/08/06.

EXT.P9: COPY OF OBJECTION SUBMITTED BY THE 1ST PETITIONER BEFORE THE 2ND RESPONDENT DTD. 25/08/06.

EXT.P10: COPY OF DRAFT SENIORITY LIST OF SENIOR SUPERINTENDENTS AS ON 1/07/06 PUBLISHED BY 2ND RESPONDENT DTD. 29/08/06 VIDE NO.BL-47108/06.

EXT.P11: COPY OF ORDER NO.B1-66122/2006 DTD. 28/09/06 ISSUED BY THE 2ND RESPONDENT.

EXT.P12: COPY OF THE PROCEEDINGS ORDER NO.C3-23597/2006 DTD. 3/01/2007 ISSUED BY THE 2ND RESPONDENT ALONG WITH SENIORITY LIST.

/TRUE COPY/

KSS

K. M. JOSEPH, J.

W.P.C. NOS.28205/06 R & 2557/07R

Dated this the 2nd July, 2007

JUDGMENT

These Writ Petitions being connected, they are disposed of by a common Judgment.

2. Petitioner in W.P.(C) No.2557/07 entered service as a Lower Division Clerk in the Civil Judicial Ministerial Service in the year 1984. Later, she was promoted as U.D. Clerk in the year 1987 and still further as Head Clerk by Order dated 6.3.1998 of the District Judge, Pathanamthitta. By Ext.P1 order dated 16.12.2002, petitioner was promoted as Junior Superintendent. She joined duty as Junior Superintendent on 21.12.2002. Ext.P2 dated 7.2.2006 is issued by the High Court promoting one Shri C.D. Joy, Senior Superintendent as Sheristadar, thus leading to a vacancy in the cadre of Senior Superintendent. Ext.P3 dated 13.2.2006 evidences promotion of the petitioner as Senior Superintendent. The Rules in force at

the time of issuance of Ext.P3 order provided that the District be the Unit for purpose of promotion to the post of Senior Superintendent. However, an amendment was effected by Ext.P4 order altering the Unit for the purpose of promotion from the District to the State. Ext.P4 Government Order is dated 21.1.2006, but it is published in the Gazette on 21.2.2006. Petitioner came to be served with Ext.P5 Show Cause Notice. It is, inter alia, stated that promotion to the post of Senior Superintendent after 21.1.2006 was to be made by the High Court based on the State Level Seniority of Junior Superintendents in the Civil Wing including Head Clerks of MACT and Head Clerks of Munsiff-Magistrate Courts (Civil Wing). Petitioner along with three others promoted by District Judges were called upon by the High Court to show cause why their promotion should not be cancelled and they should not be reverted to the category of Junior Superintendent in view of the

new Rules. Petitioner submitted Ext.P6 reply. By Ext.P7 Office Memorandum, a draft seniority list of Senior Superintendents of District Courts/Additional District Courts/Special Courts was circulated. Ext.P7(a) is the draft seniority list. Petitioner is shown at the correct serial number, it is stated, but it is stated to be provisional till the matter is decided. Ext.P9(a) is the relevant extract of the final seniority list of Junior Superintendents in the Civil Wing including Head Clerks of Motor Accidents Claims Tribunals and Head Clerks of Munsiff-Magistrate Courts. In the same, petitioner is included at Sl. No.17. If Exts.P9 and P9(a) are allowed to stand, it is pointed out that the petitioner will not be entitled to promotion as Senior Superintendent with effect from 13.2.2006. It is the case of the petitioner that preparation of a State Level final seniority list of Junior Superintendents as on 21.1.2006 was unjustified as though Ext.P4 was issued on 21.1.2006, it was published in the Kerala Gazette dated 21.2.2006 and it came into force only on 21.2.2006. Petitioner challenges Exts.P5, P9 and P9(a)

to the extent that Ext.P5 was issued and Exts.P9 and P9(a) are prepared taking 21.1.2006 as the crucial date on the erroneous assumption that Ext.P4 came into force on that day and seeks a writ of certiorari to quash them and also seeks a declaration that Ext.P4 Rules came into force only on 21.2.2006. The further prayer sought is for a direction to the second respondent not to interfere with the promotion of the petitioner. The last prayer sought is to command the second respondent to give promotion to the petitioner as Senior Superintendent with retrospective effect from the date of occurrence of vacancy with all consequential benefits. The last prayer is apparently based on the case that one Shri C.D. Joy was promoted against a vacancy of Sheristadar which arose in November, 2005. When the vacancy arose in November, 2005, though there was a seniority dispute between Shri C.D. Joy and one Shri Andrew Thomas, it is contended that one would be entitled to be promoted in November, 2005.

3. Petitioners in W.P.(C) No.28205/06 have essentially

the same complaint, namely that the Amended Special Rules are sought to be applied from a date earlier than the date of publication of the Rules in the Gazette. Therein, by Ext.P1 dated 7.2.2006, the High Court promoted one Thomas as Sheristadar. By Ext.P2 order dated 10.2.2006, the first petitioner was promoted as Senior Superintendent against a vacancy which arose on the promotion of Shri Thomas vide Ext.P1. By Ext.P3 dated 10.2.2006, the second petitioner was promoted as Junior Superintendent in the vacancy of the first petitioner. It is their case that the vacancy of Sheristadar is available from 1.11.2005. To the draft seniority list of Junior Superintendents, petitioners have preferred objection. Ext.P11 order is issued proceeding on the basis that the amendment to the Rules in question is to be effective from the date of the notification, and not from the date of its publication.

4. A Counter Affidavit is filed on behalf of the second respondent in both the cases, taking up the contention that there is no merit in either of the complaints of the petitioners. It is the

case of the second respondent that the Rules came into force on 21.1.2006 and further that there is no merit in the complaint of the petitioners that if the vacancies had been filled up earlier, they would have entitled to be appointed much earlier.

5. The first question to be decided is when Ext.P4 came into force. Sub-rule (2) of Rule 1 of Ext.P4 Rules reads as follows:

> *"(2) The Rules relating to categories 3 and 5 shall be deemed to have come into force on the 16th day of September, 1985, the Rules relating to category 1 shall be deemed to have come into force on the 1st day of July, 1988 and the Rules relating to other categories shall come into force at once."*

I am, in these cases, not concerned with either Category 1, 3 or 5. Therefore, the relevant portion in sub-rule (2) with which I am concerned is the following "The Rules relating to the other categories shall come into force at once". The Rules are seen dated 21.1.2006. They are published in the Gazette only on 21.2.2006. The question for consideration is whether it could be

said that the Rules have come into force only on the date of publication in the Gazette or on the date on which they are seen to have been made. Counsel for the parties relied on the following decisions:

1) C.R. Jose and Others v. The Board of Revenue and Others (1986 (2) ILR Ker. 670).

2) Velappan *K.* v. State of Kerala (1997 (2) ILR 441).

3) R.K.V. Motors & Timbers (P) Ltd. v. Regional Transport Officer (1982 KLT 166 (FB).

4) Sri Vijayalakshmi Rice Mills, etc. v. State of Andhra Pradesh (AIR 1976 SC 1471).

5) Mohanan v. Director of Homeopathy (2006 (3) KLT 641).

6) Commissioner of Income Tax v. Ratnam Pillai (1990 (2) KLT 342).

7) P. Bhima Reddy v. State of Mysore & Others (1969 (1) SCC 68).

8) Association of Kerala Government College Teachers and Another v. State of Kerala and Others (1995 (3) ILR Ker.46).

9) M/s. Pankaj Jain Agencies v. Union of India and Others (1994) 5 SCC 198).

10) Baburao alias P.B. Samant v. Union of India and

Others (1988 (Supp) SCC 401).

In R.K.V. Motors & Timbers (P) Ltd. v. Regional Transport Officer (1982 KLT 166), a Full Bench of this Court was dealing with a case under the Kerala Motor Vehicles Taxation Act, 1976. The question arose when the Notification bringing Rules under the Act came into force. The Full Bench proceeded to hold as follows:

> *"25. This difference between an Act of legislature and a subordinate legisltion, had been dealt with by Maxwell while discussing the retrospective effect of a legislative enactment. While it has been noted that an Act of Parliament can be effective from the date on which the Act receives the Royal assent, the position in relation to statutory instruments was held to be different. This difference had been clearly brought out in the decision in Johnson v. Sargani & Sons (1918) K.B.101. Maxwell refers to that case with the following observation:*
>
> > *"According to a decision of Bailhache J., statutory instruments do not come into operation the day on*

> *which they are made, but on the day on which they are first made available or known to the public or to the person whom it is sought to affect by them."*

See Maxwell on the Interpretation of Statutes, 12th Edition pp. 15 and 16. Bailhache J. in the decision aforesaid, adverted to the argument (given at page 102 of the report) of the defence counsel:

> *"The order became effective only when it became known to the parties and the public, namely, on May 17. The suggested analogy between a statute and an Order such as this is not sound. A publicity is given to a statute during its passage through Parliament which is entirely absent in the case of an Order."*

The reasoning of the Judgment is contained in the following words occurring in page 103:

> *"While I agree that the rule is that a statute takes effect on the earliest moment of the day on which it is passed or on which it is declared to come into operation, there is about statutes a publicity even before they come into operation which is absent in*

> *the case of many Orders such as that with which we are now dealing; indeed. If certain Orders are to be effective at all, it is essential that they should not be known until they are actually published. In the absence of authority upon the point I am unable to hold that this Order came into operation before it was known.....”*

The Court referred to the decision of the Apex Court in Harla v. The State of Rajasthan (AIR 1951 SC 467). In Commissioner of Income Tax v. Ratnam Pillai (1990 (2) KLT 342), a Division Bench of this Court considered the question when the Notification issued under the Income Tax Act became effective. This Court affirmed the finding of the Appellate Tribunal that the Notification was published in the Extraordinary Gazette and made available to the public only on 3.4.1979 and became effective only from then onwards. The Division Bench drew support from the Full Bench in R.K.V. Motors & Timbers (P) Ltd. v. Regional Transport Officer (1982 KLT 166), and proceeded to reiterate that before a law becomes operative, it must be promulgated and published. It must be broadcasted in

some recognizable way, so that all men may know what it is. In Baburao Alias P.B. Samant v. Union of India and Others ((1988) Supp. SCC 401), the Apex Court has considered the question as to the need for publication of the proclamation of emergency. It proceeded to hold as follows:

> *"Article 352 does not prescribe that a Proclamation of Emergency should be published in the Official Gazette. A Proclamation of Emergency being a very important event affecting public life has to be published in any manner known to the modern world and the publication in the Official Gazette is one such mode. If the Constitution requires that a particular mode of publication is necessary, then such mode must be followed but if there is no mode of publication prescribed by the Constitution, then it must be considered that the Constitution has left the method of publication to the authority issuing the Proclamation in order to make it known to the members of the public. In the instant case the Proclamations of Emergency had been published*

in the Official Gazette."

In M/s. Pnkaj Jain Agencies v. Union of India and Others ((1994) 5 SCC 198), the Apex Court was considering a question as to when a Notification under Section 25 of the Customs Act, 1962 granting exemption became operative. The Court proceeded to hold after an exhaustive review of case law, that the mode of publication being prescribed, the Notification will come into effect from the date of its publication in the Official Gazette. The Court repelled the contention that unless a Notification was made available in Bombay where the import took place, it will not become operative. In Harla v. State of Rajasthan (AIR 1951 SC 467), the Court held as follows:

> *"Natural justice requires that before a law can become operative, it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be*

acquired with the exercise of due and reasonable diligence."

In P. Bhima Reddy v. State of Mysore & Others ((1969) 1 SCC 68), the Apex Court has taken the view that the expression "at once" in Rule 19(1) of the Mysore Excise (Disposal of Privileges of Retail Vend of Liquors) Rules, 1967 meant "within a reasonable time" before the first of July. I am of the view that the said interpretation apparently canvassed in the context of the Rule in the present case that the Rules will come into force at once is totally inapposite.

6. Per contra, Shri O.V. Radhakrishnan, learned senior counsel appearing for the second respondent would place reliance on a Bench decision of this Court in C.R. Jose and Others v. The Board of Revenue and Others (1986 (2) ILR 670). There, amendment was made to the Special Rules on 14.5.1982. A contention was taken that in view of Section 3 of the Kerala Interpretation of General Clauses Act, 1125, the amendment came into force only when it was first published in the Gazette, namely on 6.7.1982. Repelling the argument, the Division

Bench held as follows:

> *"This argument fails to give effect to the express language of Section 3 of the Act, which states that "where any Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which the Act, is first published in the Gazette..... Here in G.O.(P) No.36/82/TD dated 14th May, 1982 itself, the note to Section 2 of the amendment rules, specifically states that two years or four chances shall be given.....from the date of issue of the orders. The amendment itself has expressed sufficiently and in clear terms that, that it will come into operation from the date of issue of the orders, i.e. 14th May, 1982 itself. The argument that Section 3 of the Kerala Act No.VII of 1125 is attracted, is without force and it is repelled."*

Learned senior counsel further relied on the decision in Sri Vijayalakshmi Rice Mills, New Contractors Co. etc. v. State of Andhra Pradesh (AIR 1976 SC 1471). Therein, it is necessary to notice the facts. The question which arose was whether the

appellants were entitled to be paid price according to the rate specified in the Andhra Pradesh Price Control (Third Amendment) Order, 1964, for the rice supplied by the appellants in January and February 1964, or according to the rate specified in the order as it stood in 1963. By virtue of the Price Control Order, 1963, maximum prices at which varieties of rice were to be sold was as specified in the corresponding entries in the Schedule. Akkulu rice would be sold at Rs.46.89 per Quintal. The appellants sold that variety of rice from 26th January, 1964 to 21st February, 1964 and was paid at the rate as aforesaid. The Price Control Order 1964, substituting for the word "the Schedule", "the words and figures" came to be made. Thereafter the Price Control (Third Amendment) Order, 1964 was issued on 23.3.1964. Therein, for Akkulu rice, the maximum price for quintal was Rs.52.25. The appellants thereupon represented that they should be paid enhanced rate for the supplies made by them from 26.,1.1964 to 21.2.1964. The Court proceeded to hold as follows:

"5. Mr. Nariman appearing on behalf of

the appellants has laid great emphasis on the word "substituted" occurring in clause 2 of the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964 and has urged that the claim of the appellants cannot be validly ignored. Elaborating his submission, counsel has contended that as the prices fixed by the Government are meant for the entire season, the appellants have to be paid at the controlled price as fixed vide the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964 regardless of the dates on which the supplies were made. We cannot accede to this contention. It is no doubt true that the literal meaning of the word "substitute" is "to replace" but the question before us is from which date the substitution or replacement of the new Schedule took effect. There is no deeming clause or some such provision in the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964 to indicate that it was intended to have a retrospective effect. It is a well recognized rule of interpretation that in the absence of express words or appropriate language from which

> *retrospectivity may be inferred, a notification takes effect from the date it is issued and not from any prior date. The principle is also well settled that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the Amending Act came into force."*

Learned senior counsel appearing on behalf of the respondent High Court placed considerable reliance on the aforesaid passage to contend that the Rule must be taken to have been made from the date on which it is issued. The pointed question which arises in this case apparently did not arise in the said case. Ext.P4 is an amendment to the statutory Rules. Making of an amendment leading to the creation of subordinate legislation and the date from which the said subordinate legislation comes into effect is the question which arises in this case. Apparently, the Apex Court was not dealing with the question whether publication in the Gazette or publication of the order is

necessary to breathe life into the Rule. Learned senior counsel also relied on the following passage in the decision in Mohanan v. Director of Homeopathy (2006 (3) KLT 641 (FB)):

> *"24. We do not think that either R. 14 of the Kerala Public Service Commission Rules of Procedure or the stipulation in the notification can make any difference to the law laid down by us as above. If such a contention is accepted, we would have to necessarily concede a power on the PSC to postpone the coming into force of the amended rules promulgated by the Government. In so far as the rule making authority is the Government, the power to fix the date of commencement of the Rules also shall be exclusively with the Government unless the statute otherwise prescribes. When the Government issues notification amending the Rules either with retrospective effect or with effect from the date of commencement of the Rule (which would be the date of commencement of the notification unless the notification itself expressly or by necessary implication stipulates*

> *otherwise), the operation of the Rules should commence on that day only and not other date."*

That was a case where the PSC invited applications for selection to the post of Pharmacist Grade II. The last date for submission of application was 29.11.1995. Pursuant to the same, a rank list was published on 27.6.2003. The Notification was dated 23.2.1995. Government issued Special Rules in the meantime as the Homeopathy Subordinate Service Rules, 1999. The minimum qualifications for the post of Pharmacist Gr.II was altered with effect from 12.4.1999. The question arose whether after the amendment of the Rules, vacancies could be filled up from the list already published by the PSC as the list was prepared based on the qualifications prior to the amendment. Rule 14 of the Kerala Public Service Commission Rules of Procedure provided for advice of candidates by the Commission for all vacancies reported and pending before them and also against vacancies which were reported to them during the currency of the rank list. The Full Bench took the view that notwithstanding the amendment, if appointments are to be made

from the list prepared according to the unamended Rules, it would amount to postponing of the date of commencement of the amended Rules itself which no authority other than the Government can do. The Court further took the view that once the amendment comes into force, any vacancy which arises subsequent to the amendment of the Rules can be filled up only in accordance with the amended Rules, notwithstanding the currency of any rank list published by the PSC. It is in the context of the contention based on the alleged right of the candidates to be appointed from the list to the vacancies reported during the currency of the list that the Court proceeded to make the observations which I have already extracted and on which the learned senior counsel for the High Court draws support from. Here also, the specific issue with which I am concerned, apparently, cannot be treated as having arisen for consideration and decision by Full Bench.

7. Shri O.V. Radhakrishnan, learned senior counsel would contend that the Rules as the present Rules pertained to

conditions of the employees who are public servants. Their conditions are not governed by contract. They have acquired a status on their appointment being made. Subject to the Rule being fair and passing muster, when tested upon the touch-stone of fundamental rights and other criteria available for testing their validity, it is open to the authority to alter the service conditions by effecting amendment to the Rules. The consent of the employee is unnecessary, runs the argument. If that be so, the amendment to the Rules having been made on 21.1.2006 and as the Rule specifically provides that in regard to the category with which I am concerned, it shall come into force at once, it came into force on 21.1.2006. In answer to a query, he would submit that the position may be different in a case where the Rule provides for penal consequence. A Rule providing for penal consequence must be preceded by due publicity as otherwise it would allow visiting a person with the consequences of mens rea without even a person knowing that what he is doing is a wrong. Take another example: If by amending the Rules, a

certain act is added to the conduct Rules by which it becomes misconduct for an employee to do a particular thing. Can it be said that even without publishing it, it is open to visit the persons concerned with the consequences of an act which is not known to be a misconduct ? Learned senior counsel for the High Court would contend that no such contingency arises by virtue of the Rules this Court is concerned with. All that has happened is that by the Rule in question, for promotion to the post of Senior Superintendent, the State was made the unit. Therefore, there is no such requirement for conferring validity on it that it should be published in the Gazette. Counsel for the party respondent would support the counsel for the High Court. He also relied on the decision in Commissioner of Income Tax v. Ratnam Pillai (1990 (2) KLT 342), wherein a Division Bench of this Court held as follows:

> *"Before a law can become operative, it must be promulgated or published. It must be broadcasted in some recognizable way so that all men may know what it is. Any order or rule*

> *promulgated in exercise of delegated legislation does not take effect when made, but takes effect only when made "known".* ***The legislation should be made public in some form, in order to make it effective.****"*

There is no case that group of employees is a small group and publicity had in fact been given in this regard. I would think that the contention of the senior counsel was the contention which weighed with the Division Bench of this Court in Kochusara v. Gracy C.T. And Others (1973 KLT 880). The question arose as to when Rule 6F of Chapter XXIII of KER came into force. The learned Single Judge of this Court took the view that the Rule came into force only when the Rule was published in the Official Gazette, and not when the Rule was made. The learned Single Judge relied on the decision of Chinnappa Reddy, J. (as His Lordship then was) in R. Narayana Reddy v. The State of A.P. ((1969) 1 Andhra W.R.77). Therein, Chinnappa Reddy, J. was considering a Notification by which the promotion of certain Officers was effected. However,

the Division Bench took the following view:

> *"In a case where the contravention of the notification or the subordinate legislation does not create a criminal offence, the principle that mens rea is an essential ingredient of an offence does not arise. The result is that in such a case the maxim ignorantia juris non excusat must have its full play. The result again is that in a case like this the mere making of the subordinate legislation is sufficient to give validity to it: publication is not necessary for bringing it into force or giving it validity. Of course, if the subordinate legislation itself or the statute under which the subordinate legislation is made lays down that the subordinate legislation will take effect only from a notified date, certainly the subordinate legislation can have effect only from such notified date. It follows that the proviso to R. 6F of Chap. XXIKII come into force on 3rd July 1971 when it was made and not on 3rd August 1971 when it was published in the Gazette."*

If the reasoning which weighed with the Division Bench remains good law, namely that the Rule came into force on the

day on which it is made, then certainly the respondents are entitled to succeed. But, I notice that in the Full Bench decision reported in R.K.V. Motors & Timbers (P) Ltd. v. Regional Transport Officer (1982 KLT 166), the Full Bench has categorically disapproved of the view taken by the Division Bench and what is more, approved the view taken by the learned Single Judge (Chinnappa Reddy, J.) already referred to. In the Full Bench, after elaborately considering the entire case law, the Court held as follows:

> *"40. With respect, we feel that the approach of the Division Bench on this question had not been correct. It may be noticed that the decision in Mayer Hans George's case, AIR 1965 SC 722, did not hold that the view of Bailhache, J. in Johnson v. Sargant (1988) 1 K.B. 101 was erroneous. The following observation of Prof. C.K. Allen on which the Supreme Court found great force, but in respect of which there was no necessity for any final decision, in that case reads as follows:*

> *"On the face of it, it would seem reasonable that legislation of any kind should not be binding until it has somehow been `made known' to the public; but that is not the rule of law and if it were, the automatic cogency of a statute which has received the royal assent would be seriously and most inconveniently impaired."*

I may also refer to the decision of a learned Single Judge of Allahabad High Court in State v. Banshidhar (AIR 1969 Allahabad 184). The matter came up before the learned Single Judge on a difference of opinion between two learned Judges. Question arose when an order issued under the Defence of India Rules will take effect. The Court took the view, in fact, that the order of the nature which was considered therein would not take effect immediately on publication in the Gazette. The learned Single Judge further held as follows:

> *"10. I have not known of any Order made under the Defence of India Rules and none has been brought to my notice in which the time of its operation was not specifically mentioned. By*

way of example I may refer to the following orders made under the D.I.R. In which it was clearly mentioned that they were to come into force at once:

1) Cotton Control Order, 1955.

2) Cotton Textile Order, 1948.

3) Cotton Textile Export Control Order, 1949.

4) Cotton Textile Control of Movement Order, 1948.

5) Textile Production by Handlooms Control Order, 1956.

The Order in question is perhaps a solitary instance where no date was fixed for its coming into operation."

8. In Natarajan v. Board of Revenue (1995 (1) KLT 695), an amendment was carried out to Rule 3 of Part III of KSR. The amendment was made on 25.6.1990. But, it was published only on 4.12.1990. It was further provided that the Rules shall be deemed to have come into force with effect from 14.11.1966. The petitioner retired from service on 30.6.1990. It was in such

circumstances, a learned Single Judge of this Court held as follows:

> *"In the present case the date of publication in the Gazette is later than the date of retirement of the petitioner. If that be so, it has to be considered whether a rule which has been issued after the retirement of the petitioner can be made applicable to him even if the Rule is given retrospective effect, w.e.f. 14-11-1966. At the time of petitioner's retirement no judicial proceeding could have been instituted against him in respect of a cause of action which had arisen four years before such institution. It was a condition of service as far as the petitioner was concerned. Such a condition or service cannot be changed to his disadvantage after his retirement by an amendment to the rule which is brought into force after his retirement. Imposition of such penal provision with retrospective effect on an Officer who has already retired from service would certainly amount to arbitrary exercise of power. The amendment brought under Ext.P13 cannot be made applicable to employees who had already retired from service at the time when*

Ext.P13 was notified. If Ext.P13 amendment was published in the Gazette before the date of retirement of the petitioner judicial proce3edings could have been instituted with the approval of the Government even if by that time the period of four years was already over as the amendment is given retrospective effect from 1966. But it is not so when Ext.P13 amendment itself is brought in only after the retirement of the petitioner."

Section 3 of the Kerala Interpretation And General Clauses Act, 1125 reads as follows:

"3. "Act" shall mean a Proclamation or Act of Travancore or Cochin, an Act or Ordinance of Travancore-Cochin, an Act passed by the Legislature of the State of Kerala, an Ordinance promulgated by the Governor under Art. 213 of the Constitution or, where with respect to the State of Travancore-Cochin or Kerala the power to make laws is vested in the President or other authority under sub-clause (a) of Cl.(1) of Art. 357 of the Constitution, any law made in exercise of such power."

"Enactment" is defined as follows:

> ""Enactment" shall include an Act."

"Rule" is defined as follows:

> *"Rule" shall mean a rule made in exercise of a power conferred by any enactment and shall include a regulation made as a rule under any enactment."*

It is doubtful whether Section 3 as such will apply in the matter of deciding the question as to when an Amendment to the statutory Rule will come into force. In fact, Section 3 provides for coming into operation of an Act after receiving the assent of the concerned specified authority, namely Rajapramukha, the Governor or the President as the case may be and its further publication in the Gazette. Of course, it will apply only in a case where the Act is not expressed to come into operation on a particular day. Of course, this is at variance from the provisions of the Central General Clauses Act, 1897 which provides that the Central Act will come into operation on the day on which

the assent is received. The Kerala Public Service Act, 1968 in the amended form, empowers the Government to frame Rules either prospectively or retrospectively. It is certainly open to the law giver to frame subordinate legislation making it clear that it will have effect from a particular day which is prior to the enacting of the law in which case it would carry retrospective effect. It is to be noted that in this case, Ext.P4 Rules came to be made, no doubt, on 21.1.2006. It is specifically provided in respect of certain categories that the Rules would have retrospective effect. But, in respect of the category which I am concerned, all that it says is it has come into force at once. Having regard to the principle laid down by the Apex Court, as to when subordinate legislation will come into being, as also the decisions of this Court in R.K.V. Motors & Timbers (P) Ltd. v. Regional Transport Officer (1982 KLT 166 (FB)) and Commissioner of Income Tax v. Ratnam Pillai (1990 (2) KLT 342), I am of the view that the Rule in question must be treated as having come into force only with its publication in the

Gazette on 21.2.2006, as I have already found that publication is necessary to bring into force the Rules and it cannot spring into existence by the making of the Rule.

9. In my view, the Rules will have effect only after it is published. But, the question arises as to with effect from what day, the Rules will have effect ? In respect of Categories 3 and 5, they are deemed to have come into force on 16th of September, 1985. In respect of Category 1, it came into force on the first of July, 1988. In respect of the category with which I am concerned, it is stated to come into force at once. Undoubtedly, the Rule will not come into force unless there is publication. Once there is publication without anything more and subject to any indication to the contrary, the Rules will come into force immediately on its publication. For instance, the Kerala Government Servants Conduct Rules, 1960 was issued on 5.1.1960 and published in the Gazette on 12.1.1960. It does not say that the Rules will come into force at once. It cannot be understood that the Rules have not come into force.

Certainly, the Government Servants Conduct Rules, 1960 has come into force with the publication in the Gazette on 12.1.1960. The Kerala Co-Operative Societies Service Rules does not indicate that it is to come into force at once. Further instances are the Kerala Craftsmen Trading Service Rules, the Kerala Dairy Development Service Rules, Kerala Dental Education Service Rules, the Kerala Drugs Control Service Rules, and there are several other such Rules. If that is so, it must be taken that these Rules have come into force upon their publication in the Gazette. Any other interpretation would mean that in the absence of the words that the Rules will come into effect at once even after publication of the Rules, they have not come into force which result, I feel, is unacceptable. The rule making authority makes the Rules and issues it on a particular day. The publication may or may not be effected on the same day. When the rule making authority indicates that it is to come into force at once, it must be taken to mean that the words "at once" must be understood from the perspective of the rule

making authority, making the rule. Therefore, the intention of the rule making authority must be taken to be that it is to come into effect immediately. It must be taken to be a case where the rule making authority has indicated by employment of the words "it shall come into force at once" that upon publication it will take effect from the date of its issuance. Words are not used in any Statute superfluously. Even without the use of the words to the effect that the Rules shall come into force at once, if the intention of the rule making authority was that it is to come into effect with effect from the date of publication, no such exercise was necessary as it is the law that upon publication of the Rules, if there are no words giving any contrary indication, it will come into force upon publication. Therefore, I reject the contention of the petitioners that the Rules in question will not be applicable with effect from 21.1.2006 which is the date of its issuance.

10. The further contention of the petitioners, of course, is that had the appointments been made in the higher cadre in time

and appointments made to the consequential vacancies, the petitioners would have been appointed prior to the enactment of Ext.P4. As rightly pointed out by Shri O.V. Radhakrishnan, learned senior counsel, the right available to an employee is a right to be considered to the vacancy. This is not a case where there was a vacancy in the cadre of Senior Superintendent, appointment to which was delayed. The contention of the petitioners being based on vacancy arising in the post of Sheristadar not being filled up, I do not think that the petitioners can make a complaint and claim appointment under the earlier Rules on the basis that had the appointments been made in the higher cadre earlier, they would have a legal right to be appointed under the unamended Rules. In such circumstances, I see no merit in the Writ Petitions and they are dismissed.

K. M. JOSEPH, JUDGE

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